

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

McGUIRE STEEL ERECTION, INC. and  
STEEL ENTERPRISES, INC.,  
A Single Employer

Case 7-CA-37401

and

LOCAL 25, INTERNATIONAL ASSOCIATION  
OF BRIDGE, STRUCTURAL AND ORNAMENTAL  
IRONWORKERS, AFL-CIO

*Patricia A. Fedewa, Esq.,*  
for the General Counsel.

*Noah Yanich, Esq., (Jacob & Weingarten, P.C.),*  
of Troy, MI, for the Respondent.

*Samuel C. McKnight, Esq., (Klimist, McKnight  
Sale, McClow & Canzano, P.C.)*  
of Southfield, MI, for the Charging Party.

DECISION

Statement of the Case

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Detroit, Michigan on October 28-29, 1996. The charge was filed July 6, 1995<sup>1</sup> and the complaint was issued September 29. The General Counsel and the Charging Party allege that Respondent refused to provide the Union with the payroll records of Steel Enterprises despite numerous requests. Respondent contends that it did provide and make available all the documents requested.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by all three parties, I make the following

Findings of Fact

I. Jurisdiction

McGuire Steel Erection, Inc., a corporation, is a structural steel erector in Brighton,<sup>2</sup> Michigan, where it annually purchases and receives at its Michigan jobsites goods valued in excess of \$50,000 directly from points outside of the State of Michigan. Steel Enterprises, Inc., is a payroll processing company for employees of McGuire Steel Erection and related

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<sup>1</sup> All dates are in 1995 unless otherwise indicated.

<sup>2</sup> Respondent moved its offices from Farmington, Michigan to Brighton, Michigan at the end of 1995.

companies. McGuire Steel Erection, Inc., and Steel Enterprises, Inc. admit, and I find that they are for purposes of this case a single business enterprise and a single employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. They also admit and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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## II. Alleged Unfair Labor Practices

Local 25 (the Union) has been the designated exclusive bargaining representative of McGuire Steel Erection's ironworkers since at least 1990. On June 2, 1994, Gregory Hicks, the Union's business manager and its attorney, Samuel McKnight, met with Daniel McGuire, President of McGuire Steel Erection. The three men discussed information received by Hicks that some members of the Union were being paid by Steel Enterprises for work covered by the Union's collective bargaining agreement with McGuire Steel. The Union has never had a collective bargaining agreement with Steel Enterprises, which is owned by Dan McGuire and his brother John<sup>3</sup>. Payments to the Union's fringe benefit funds were not being made on salary payments made to ironworkers by Steel Enterprises.

Dan McGuire promised to look into the matter. Attorney McKnight told McGuire that he would need to see the payroll records or check registers of McGuire Steel, Steel Enterprises and Dumas/McGuire, a joint venture covered by a collective bargaining agreement with the Union. Five days later, Ellen Moss, a partner in McKnight's law firm followed up the meeting with a letter to McGuire (Jt. Exh. 1). Moss informed Respondent that the Union needed:

1. Payroll records from Steel Enterprises, Inc. for all Iron Work or work performed by Iron Workers for the time period January 1, 1992 to the present [June 7, 1994].

2. Any and all records in the possession of Steel Enterprises that indicate work performed by Iron Workers or Iron Work performed including the jobsite, the amount of work performed at this site, the type of work performed at this site, the names of the employees that performed the work at this site and the dates work was performed for the time period January 1, 1992 to the present.

Three weeks later, not having heard from McGuire, Moss wrote to ask if he was planning on responding. McGuire replied on July 5, 1994. He stated that he was the only one capable of reviewing the documents and that given the number of documents and his father's illness, it would take him some time to do so. McGuire did promise to respond as soon as possible.

Five months passed without a response. Moss wrote McGuire again on December 14, 1994. Respondent then sent the Union a summary of payments to various individuals for three one-year periods beginning June 1, 1991 and ending May 31, 1994. Some daily time sheets for these individuals were also provided (G.C. Exhs. 2-4).

Moss wrote again to McGuire and his attorney Harry Eisenberg on January 11, 1995. She told them that the information provided was insufficient and that the Union would need to see "the actual payroll records for these individuals, including their W-2 forms" as well as payroll records for McGuire Steel and Dumas/McGuire. Moss also asked for documentation of

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<sup>3</sup> Daniel McGuire is President of Steel Enterprises, McGuire Steel Erection, Dumas/McGuire, a joint venture, and two other companies.

payments made by Steel Enterprises to the Iron Workers Fringe Benefit Funds for this 3-year period.

On January 27, 1995, Moss went to the offices of McGuire Steel where she was shown 4–6 boxes of records for McGuire Steel and Dumas/McGuire by Jennifer Prebenda Dupuie, then Respondent's Human Resources Director<sup>4</sup>. Moss spent about a half hour looking at these records and then left. She did not look at any Steel Enterprises records because she was told by Ms. Dupuie that these records were not available but would be made available in the future<sup>5</sup>. Dan McGuire had instructed Dupuie to inform Moss that these records were not yet available.

In fact, the payroll records of Steel Enterprises were in a storage room down the hall from the conference room containing the McGuire Steel and Dumas/McGuire records. These records included computerized payroll registers, check registers, canceled checks with carbons and computerized timesheets. These records indicated that Local 25 members were paid for weekend overtime and some weekday overtime by Steel Enterprises. When paid through Steel Enterprises these members received \$26 per hour and nothing was paid into the Union fringe benefit funds<sup>6</sup>.

<sup>4</sup> Between January 1995 and the hearing in October 1996, Ms. Prebenda got married and changed her last name to Dupuie. She will be referred to by her new name in this decision.

<sup>5</sup> One issue in this case is the credibility of Jennifer Prebenda Dupuie, who worked for Respondent from May 1988 until February 1996. The last six years of her employment she was Respondent's Human Resources Director. Dupuie quit voluntarily giving only two hours notice. Respondent alleges that her testimony should be not be credited because she has a personal vendetta against Daniel McGuire. While Ms. Dupuie obviously has some sort of animus towards McGuire, I find that her credible for the following reasons:

1. Respondent contends that Dupuie's vendetta against McGuire is established by the fact that she copied McGuire's personal telephone and credit card bills and gave them to McGuire's fiancée just before she quit. I need not decide whether to credit McGuire's hearsay testimony that this in fact occurred. Even if this happened I see no reason to believe that whatever caused Dupuie to give McGuire's bills to his fiancée would cause her to lie under oath about his dealings with the Union.

2. Respondent also alleges, solely on the basis of Daniel McGuire's testimony, that several years before the hearing Dupuie stole money raised in some sort of contest in which the company was involved. It explains its failure to fire her as being the result of giving her the benefit out the doubt. I discredit this testimony because if Respondent actually believed Dupuie to be dishonest it would have fired her. In this regard, I note her duties included responsibility for a number of financial matters.

3. Respondent also notes that Dupuie's father is an attorney who represents unions. I see no reason to conclude that she would lie or fabricate events about McGuire's relationship with Local 25 for this reason.

4. Finally, I credit Dupuie because her testimony is corroborated on several important issues by Gary Czarnik, Respondent's controller. For example, Czarnik confirms that there was a payroll register for Steel Enterprises, Inc. Moreover, I find Dan McGuire's testimony contradicting her not to be credible.

<sup>6</sup> The Union's base rate is approximately \$19.8674 per hour. With fringe benefit payments an employee's compensation is higher than \$26 per hour.

On May 16, Union attorney McKnight wrote Respondent's counsel renewing its request to review actual payroll records and time sheets for Steel Enterprises. McKnight and his law clerk, Michael O'Hearon went to McGuire's offices to review these records on June 1. They were provided with the same summaries and time sheets that had been sent to the Union earlier and a number of W-2 forms (R. Exh.1). Not all W-2s for Local 25 members were provided. Dan McGuire instructed Jennifer Dupuie to give McKnight only those W-2s that matched those employees listed on the summary sheets and those for office personnel.

On July 6, the Union filed an unfair labor practice charge alleging that since January 6, through the date of filing, Respondent had refused to provide the information it had requested. A few weeks later Union attorney McKnight discussed the charge with Respondent's attorney, Harry Eisenberg. When Eisenberg told him that all Steel Enterprises' payroll records had been provided, McKnight responded that this could not be the case because every company had a check register for its payroll account. Eisenberg denied that Steel Enterprises had such a register. The fact that Steel Enterprises did have a check register for its payroll account is established by the testimony of its controller, Gary Czarnik, (Tr. 266, 283) as well as by Dupuie<sup>7</sup>.

Respondent provided the National Labor Relations Board with copies of some but not all canceled payroll checks and itemized statements of deductions on August 30. The Board provided these documents to the Union. Some time thereafter, Michael O'Hearon prepared a comparison of the amounts on the summaries and time sheets initially provided to the Union, the amounts listed on the W-2 forms and the total amount of the checks provided for each employee (G.C. Exh. 5).

O'Hearon's comparison demonstrates that not all the information requested by the Union was provided. One need only look at the documents pertaining to two employees, Roger Luck and Randall Morse. As to Luck, his W-2 forms establish that Respondent had more documentation regarding his hours worked and salary paid than was provided the Union. The W-2s indicate that Steel Enterprises paid Luck \$10,215 in 1991; \$9,634 in 1992, \$10,647 in 1993 and \$6,644 in 1994. The summary provided indicates \$75.44 paid for 4 hours of work between June 1, 1991 and May 31, 1992 (Respondent's fiscal year); \$474.65 for 25 hours of work for fiscal year 1992-93; and \$77.48 for 4 hours of work for fiscal year 1993-94. Obviously there must have been documentation from which the W-2s were prepared.

On the summaries provided to the Union, Respondent reported that Steel Enterprises paid Randall Morse \$772.21 for 42 hours of work in fiscal year 1991-92 and \$294.18 for 16 hours in fiscal year 1992-93. His W-2 forms indicate \$250 paid in 1991; \$1,612 in 1992 and \$208 in 1993. The canceled checks and check stubs provided do not equate with either the summaries or the W-2 forms.

#### Discussion

<sup>7</sup> Czarnik also confirms that the computerized payroll and time records for Steel Enterprises were retrievable at least until Respondent's computers crashed in December 1995 (Tr. 283). Daniel McGuire was asked twice about the existence of a payroll register for Steel Enterprises. He testified initially that he did not know whether a master payroll register or check register ever existed for Steel Enterprises (Tr. 226). On cross examination, however, when asked if there ever was a payroll register for Steel Enterprises, he answered, "I'm sure there was" (Tr. 255).

Upon request, an employer is obligated to provide to a union with which it has a collective bargaining agreement, information that is relevant to the union's obligations to represent its members. *W-L Molding Co.*, 272 NLRB 1239, 1240-41 (1984). Local 25's request for Steel Enterprises payroll records clearly falls into this category of data. The Union had a  
 5 obvious need for information necessary to determine whether some of its members were receiving wages, on which contractually mandated fringe payments were not being made.

Respondent does not argue that the Union was not entitled to the information it requested. Instead, it argues that this information was provided. Respondent also argues that  
 10 some of the information that the Union now claims was withheld was never requested. I not only conclude that Respondent violated Section 8(a)(1) and (5) as alleged, I find its defenses to be frivolous.

Steel Enterprises had more payroll records than those Respondent provided to the  
 15 Union. First, Ms. Dupuie's testimony, which I have credited, establishes that this is the case. Secondly, the Steel Enterprises W-2 forms for Local 25's ironworkers had to have been prepared from some other records. They were obviously not prepared from memory. Respondent's controller Gary Czarnik confirms that there were computerized payroll and time records for Steel Enterprises, at least up until December 1995.

Respondent contends that it made all the Steel Enterprises payroll records available to Ellen Moss on January 27, 1995, and that she chose not to review them because she was in a hurry. Even if I were to credit Respondent's testimony in this regard, which I do not, it was not  
 20 relieved of its obligation to make these records available again. When McKnight and O'Hearon came to its offices on June 1, for example, McGuire was obliged to make all the Steel Enterprises payroll records available even if Moss had the opportunity to review them in January.

McGuire's counsel makes much of the fact that none of the Union's correspondence specifically mentioned a payroll register or check register. However, Greg Hicks' testimony, which is un rebutted, establishes that Samuel McKnight requested payroll registers or check registers at their initial meeting with Daniel McGuire. Respondent produced neither a payroll register nor a check register to the Union. Moreover, shortly after the charge in this matter was  
 30 filed, McKnight discussed the existence of a check register for Steel Enterprises' payroll account with Respondent's attorney Harry Eisenberg. If there was any misunderstanding as to whether the Union was requesting a check register, this conversation cured it.

Finally, it was clear from the context of Respondent's conversations with the Union, that the Union was seeking whatever records Respondent possessed that indicated all payments made by Steel Enterprises to Local 25 members and the reason for those payments. This was  
 40 apparent regardless of whether or not the words "payroll register or check register" were actually mentioned. Respondent had such records and never produced them to the Union or the Board.

#### Conclusions of Law

By refusing and failing to provide the Union with the presumptively relevant payroll records it requested, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find

that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Additionally, I recommend that the Union's request for an order that Respondent reimburse the Union for its litigation expenses be granted<sup>8</sup>. Ordinarily the Charging Party is not entitled to reimbursement of litigation expenses. This remedy is only warranted in cases in which the Respondent's defenses are frivolous and not merely debatable. When Respondent's defenses are rejected upon resolutions of credibility they must be deemed to be debatable and such a case is not an appropriate one for the award of litigation expenses. *Heck's Inc.*, 215 NLRB 765, 768 (1974); *Care Manor of Farmington, Inc.*, 318 NLRB 330, 331,335 (1995); *Impressive Textiles*, 317 NLRB 8, 17 (1995).

I have credited the General Counsel's witnesses generally and with regard to facts disputed by Respondent's witnesses. However, the testimony of Respondent's witnesses establishes that it violated Section 8(a)(1) and (5) as alleged. Even if I were not to rely on any of the General Counsel's witnesses, the testimony of Respondent's controller, Gary Czarnik, establishes that there were Steel Enterprises payroll registers retrievable on June 1 and afterwards which were never provided to the Union as requested (Tr. 283). In the light of this evidence, I conclude that Respondent's contentions that it provided all the information requested is frivolous.

Moreover, Respondent intentionally failed to provide the information despite repeated requests by the Union. Its conduct was sufficiently egregious that I recommend that Respondent be ordered to pay the expenses of the Union incurred in the investigation, preparation, presentation and conduct of the instant case, including reasonable counsel fees, salaries, witness fees, transcript and record costs, printing costs, travel expenses, and per diem and other reasonable costs and expenses. *Impressive Textiles, above*, at 8, 9 and 17.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>9</sup>

#### ORDER

The Respondent, McGuire Steel Erection, Inc. and Steel Enterprises, Inc., Brighton, Michigan, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Failing and refusing to provide the Union with any information it has requested regarding payments made to bargaining unit members or other individuals by Steel Enterprises from June 1, 1991 to the present, including but not limited to payroll registers and check registers.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

<sup>8</sup> The General Counsel did not request reimbursement of its litigation expenses.

<sup>9</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the Union with the information described in paragraph 1(a) above.<sup>10</sup>

(b) Upon request bargain collectively and in good faith with the Union and provide information requested by the Union as required by the Act.

(c) Pay to the Union the costs and expenses incurred in the conduct of the instant case in the manner set forth in the remedy section.

(d) Within 14 days after service by the Region, post at its facility in Brighton, Michigan copies of the attached notice marked "Appendix."<sup>11</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The Respondent shall also duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 6, 1995.

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<sup>10</sup> Respondent contends that the information regarding Steel Enterprises prior to December 1995 is no longer retrievable through its computer system. It has not proved that to be the case. Moreover, these records also existed in tangible form and there is no evidence that the hard copy records do not still exist. Gary Czarnik looked for the Steel Enterprises records, including the check register, twice in 1996 and did not locate them (Tr. 266, 282). This evidence falls far short of establishing that these records no longer exist.

<sup>11</sup> If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

5 Dated, Washington, D.C. February 21, 1997.

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Arthur J. Amchan  
Administrative Law Judge

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## APPENDIX

## NOTICE TO EMPLOYEES AND MEMBERS

5 Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

10 The National Labor Relations Board has found that we violated the National Labor Relations Act  
and has ordered us to post and abide by this notice.

15 WE WILL NOT fail or refuse to provide Ironworkers Local 25 information regarding payments  
made to bargaining unit members by Steel Enterprises, Inc., or any other information which is  
relevant to, and necessary for Local 25's performance of its function as the exclusive collective-  
bargaining representative of the unit described below.

20 All journeymen, apprentices, foremen, acting general foremen and general foremen  
employed as structural ironworkers, ornamental ironworkers, welders, precast erectors,  
sheeter and bucker-ups, and conveyor ironworkers employed by members of the Great  
Lakes Fabricators and Erectors Association, members of the Associated General  
Contractors of America, Detroit Chapter, Inc., and members of the Michigan Conveyor  
Manufacturers Association, Inc., and by employers who have authorized any of said  
associations to bargain on their behalf, but excluding all guards and supervisors as  
defined in the Act.

25 WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the  
exercise of the rights guaranteed you by Section 7 of the Act.

30 WE WILL provide to the Union any information it has requested regarding payments made to  
bargaining unit members or other individuals by Steel Enterprises from June 1, 1991 to the  
present, including but not limited to payroll registers and check registers.

35 WE WILL pay to the Union all costs and expenses incurred in the investigation, preparation,  
presentation and litigation of this proceeding in light of our frivolous defense of the Board's  
complaint.

McGUIRE STEEL ERECTION, INC. AND  
STEEL ENTERPRISES, INC.

(Employer)

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Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

45 This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and  
must not be altered, defaced, or covered with any other material. Any questions concerning this  
notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan  
Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313-226-3244.